

## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

**Susan Morth/EIC:** Good morning everybody, we're going to get started. It's Susan Morth from EIC thanks for being on the call. We have a few topics today and we are looking forward to some input from the group either on the call today or if you want to email us after the call with your thoughts. Today we are going to give you an update on EIC's Open C-PACE municipal membership, what the status is by municipality, and also how we are planning to communicate with the group on a more regular basis going forward. Bob Fischman is here again to discuss the audit and scope of work requirements as we move toward a lot of deals. We want to ensure that all the organizations understand the documents that we are going to need on those matters, a little update on new construction. Also, we want to discuss the issue of retroactivity. And one of the last things we want to talk about is the RFQ and our application. On the RFQ there are few additional requirements that our attorneys at Norton Rose are looking for. We are going to be asking everybody to sort of make a little housekeeping update to the RFQ responses and then we also wanted to ask capital providers what their invoices look like, if they can share some examples with us as we work on our systems here where EIC will be sending out invoices to property owners instructing those property owners to pay the capital provider directly, we are interested in what those should look like. So, with all of that, I just wanted to kick off introducing Sarah Smiley and you all know Mark Thielking, who are here and are going to give us an update on municipal membership.

**Mark Thielking/EIC:** Good morning everyone, I'm Mark Thielking and I'm here with Sarah Smiley and just to give you some overview statistics in EIC's municipal effort....they are all in process now to move forward with the approval of the local law and this will enable CPACE and we have new municipalities that are moving forward as well. We have seven municipalities that are in active discussion to move forward with the Open CPACE process. We have twenty that are in some form of discussion. In addition to that, we have eight in process to pass the local law and we have one that is fully enabled. We kicked off this process in late April and will discuss the progress we have so far. In talking about the municipalities that were not existing members that are moving forward some are Nassau County, they have passed their local law and are moving forward with their municipal agreement and it is expected to be enabled probably by the end of July. Other municipalities are Rockland County, they passed their local law and authorized signing the municipal agreement two days ago. We expect them in the next three weeks to be fully enabled as well. City of Yonkers, has also approved the process to enable the local law; they also approved the municipal agreement and expect them by the end of August to also be enabled. Some other big counties outside the Hudson Valley that are moving forward is the big City of Syracuse and they are expected to move forward with the local law and that will be starting in July. In addition to that, other big counties in the western region are Erie County as well as Niagara County and

## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

the City of Buffalo. I'm going to turn it over to Sarah Smiley to talk about our existing membership.

**Sarah Smiley/EIC:** For our existing membership some of our bigger municipalities include Suffolk County which is moving forward, they just had their hearing on the local law. They have a slightly more extended process but they will be holding their vote on June 18<sup>th</sup>, if all goes according to plan. Our first existing member that is fully activated in the new program is Saratoga Springs and a number of others are in process but I think the most hopeful. Just to summarize as Mark has said that a number of our existing municipal members are in process of going through the law adoption and we will be sending out an update as each one is fully activated. I've been trying to keep up with requests for updates as they've come in and feel free to continue asking for those updates but we will be making it more formalized with announcements that we send out by email. If there are any other specific questions, I am happy to field them.

**Mark:** We are muting out people who are making noise one by one. There we go, all right ask your questions.

**Anna Lee/Norton Rose:** My question was do you think it would be a good idea to put on your website a list of municipalities that have been enabled?

**Susan:** Yes, we have a list, it's done.

**Sarah:** Yes, they are up on the website.

**Anna:** Oh, I didn't see that, okay, thanks.

**Susan:** And moving on, we are going to have Bob talk about the audit and scope of work requirements. Everybody on the call did receive an attachment with a list of things that Bob will need from all of you. If you haven't had a chance to look at it, that's fine. We just wanted to do a kind of high-level overview.

**Bob Fischman/EIC:** Thanks everybody and I do hope everybody has received that. I did make an introductory email to each of the capital providers and ask that they assign an individual that will be working directly on the energy audit portion of qualifying the projects and that individual would be their direct point of contact. That will help streamline things. With respect to the audit specifically, as a reminder, every project going through CPACE in New York State is required to conduct some form of an energy audit or a renewable energy feasibility study. So what I did in this document that you have each received is I have broken this down into three distinct categories. There are projects that will come through using

## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

comprehensive approach, there are those projects that will use pre-qualified measures and those of course that are using renewables which require no renewable energy system feasibility study. Each of these projects should have some type of an energy baseline to compare a list of proposed measures, some of the key take aways. Remember that the PACE financing cannot exceed the weighted life of the measures and so we will need to know what those individual measures are and have a look at the weighted life calculation. We will need information on savings, we will need information on project costs. Basically, I'll leave it at that. I don't want to go into the detail, you all have that list there, but I'm more than happy to take any specific questions that you may have.

*Susan:* I don't mean to jump in, the point of all this is that you should all know that every one of our approved capital providers have projects that they are pursuing and looking to close in the next few to six months. We're trying to kind of grease the skids so that everybody that's going to be communicating with Bob does a dry run to make sure that we are on the same page before we actually see the deal documents because we don't want to hold you up when you are ready to go. So, Mike's going to be speaking as well, our underwriter, and sort of the same thing we are trying to identify Mike and Bob's counterparties at all our approved capital providers and get the discussions going so that those folks on your teams understand what we need in New York State and we don't have friction when you are looking to close your first deal. If you would communicate with people within your organization to look out for our emails to respond that would be great. Thank you. If there are no questions on that, we just want to move through the list. Many of you are aware a new construction amendment has been introduced in New York State to the Assembly and it's on the floor and we are hoping and are semi-confident it's going to make its way to a vote this year, there appears to be no opposition. This current legislative session does expire June 23<sup>rd</sup>. We are in the process of asking our Board to send a letter, as they did the last time we changed Article 5L reiterating their support for this amendment and its importance in improving energy efficiency and renewables as it relates to new buildings being built. If anybody has any particular interest in also providing some type of letter of support, you can contact us and we can all get together and make the last push here. If there is a question, go ahead; otherwise we are going to move on. The next topic we have for you to think about, we are interested in feedback from the Advisory Group on retroactivity. It seems like many states have a sort of 36 month rule around what's reasonable for a look back on PACE financing for projects. There is nothing in the law that we've seen and there's nothing certainly in EIC's underwriting guidelines that would prevent PACE from being used to pay for measures that qualify but we are assuming we are going to want to have some sort of guideline or rule around how far back is reasonable and I'm sure Anna and our team at Norton Rose is on that as well. If you in the group have an idea what you

## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

think is the best practice we would be happy to hear that. And then next Mike Castracan will introduce himself to the group and talk a little bit about EIC's application that is going to be on the website and also just a couple of additional requirements that we will be asking RFQ responders for in that we have had some feedback from Norton Rose. Mike Castracan is up next. Thank you.

**Mike Castracan/EIC:** Hi, everyone, as Susan said we have a couple of housekeeping items. When the capital providers first submitted the RFQ it was for a product that never got launched so after reviewing it with the attorneys we decided it needed to be beefed up a little bit, but it won't be too burdensome because it is all things you have in house and will be able to provide pretty easily. The main difference is we have a section on Freedom of Information Act and how to address information you consider confidential. I am not even sure how much that will come into play given what we are asking for but if it does, we just ask that you mark it confidential and provide a letter indicating why and we will segregate that. Also, there is a question about tension countries that requires you to self-certify that hopefully you are not doing business with Iran or North Korea. For privately held firms we for an independent certification as to the availability of funds to your broker or banker or the other responsible party. Finally, we are requiring a little more depth of information about owners and partners. Hopefully it won't be too burdensome. We are also going to put up on the website a list of documents required for closing and it is going to be typical and market standard; the same things you see in other jurisdictions. Hopefully that also won't be an issue, you can reach out to me to discuss both of those things. And finally, also the application will be up, and again it's very market standard there is nothing in there that you wouldn't get yourselves. I expect those things to be up shortly probably by end of day Monday. I am your point of contact so feel free to reach out to me, my contact information right now will be on the RFQ once it is up and they will eventually get me up on the website. Thank you.

**Anna Lee/Norton:** Are we going to ask the capital providers that are already approved to requalify?

**Mike:** Yeah, everyone is going to have to resubmit if they've already done it.

**Susan:** Sorry, a lot of you responded a very long time ago to an RFQ that is no longer consistent with what we have on the web now, but to those of you that just responded in the last couple of months it will just be a very minor tweak which hopefully won't take more than five or ten minutes to vet.

**Michael Yaki/CleanFund:** Can I ask a question? Thanks for that info. I just want give you a 30,000 foot observation which is when you start talking about owners

## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

and directors and things like that. You're starting to ask questions like that you start treading a lot more on banking regulations and I really want to stress we don't want to go near that route to make it easier for DSS to come after us in the future. I just want to put that out there.

**Mike Yaki:** Anna, can you address that?

**Michael:** Under the California regulations for residential, they start digging in asking for as part of their regulatory process things like ownership structures, things like the PII issues. I am not saying it is bad or good, I'm just noting there are hairs on the back of my head that are standing up a little bit because when we start going in that direction, and remember every state tends to copy every other state, when PACE goes forward, it sounds a little bit like we are mimicking a regulatory structure that we have all desperately wanted to keep away from as we have been going forward in new markets across the country. That's all.

**Anna:** We hear you, Michael. We understand your concerns and that is why we are also putting in there that you can put confidential information or information you consider confidential in the supplement so we have to kind of balance here the capital providers concerns with confidentiality and EIC's concerns with headline risks. We have to do some due diligence so that we don't get in the paper because one of the capital providers is not who they say they are. So, we have to do some basic diligence and we consider the questions we have on the RFQ are pretty much basic. If there are certain things that have to be kept confidential then it can be put in a supplement and we will do our best to keep it confidential, but I have also have to think about EIC's liability.

**Patrick Dolan/Norton:** Michael, one of the things we are focused on is money laundering OFAC. The edits to the RFQ form we went through with our bank regulatory person and we can go back and take another look at that and make sure we are not bumping up against potential consumer regulatory issues. That is what we are trying to avoid is any money laundering OFAC issue.

**Susan:** Thank you, Patrick. This is Susan. I will tell you that we do have international interest in the program, so we also just want to make sure as we move to seeing responses to our RFQ from those outside of the US, that we are just doing what we need to do to protect EIC. Thank you, Patrick. Any other questions before we move on? The thing and the last topic we wanted to ask the group today is we are now looking at what the EIC invoice or bill or what not to the property owners is going to look like because EIC is going to be sending the property owner the bill with instructions to remit the PACE funds to the capital provider. If any of you would be so kind to send copies of what you think serves

## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

you best, just to get us started; that would be helpful. Any questions in general for Anna or Patrick or anyone here at EIC?

*Michael:* This is Michael again, can we kind of go off topic of what we are discussing here today.

*Susan:* Sure

*Michael:* My question has to do with the lovely issue of enforcement and I just wanted to get clarity that the process for enforcing delinquencies after redeeming outstanding priority taxes owed by the property owner is essentially due to foreclosure akin to a mortgage foreclosure and we would not be bound by timelines of the municipality exercising their right to enforce but rather more of a private lender schedule like the 90 day schedule, that kind of thing?

*Anna:* It is a judicial foreclosure and you would have the redemption period that is allowed by statute which I believe is two years unless it's a certain kind of property like a farm or something or certain properties are longer.

*Michael:* Okay, that is what I am trying to figure out. Are we using the redemption period attached to how a municipality exercises judicial foreclosure or how a mortgage lender exercises judicial foreclosure? Because there are very two separate periods regards to a) redemption and then b) how long you have to wait before you actually take an action; before you can actually file a judicial foreclosure action. I am just trying to figure that out because on the one hand we were told "well, you are just going to be acting as if you are an owner of a mortgage deed of trust" and on the other are we but are we actually under a different set of timelines and guidelines regarding the process that actually mirror more what the local locality would have to do?

*Anna:* So, our understanding is that the timeline and what is provided for in the statute and it is not exactly the same in every municipality so we are trying to do some sort of canvas of that. But, we don't think there is actually a different timeline for mortgage lenders. Everybody that is a lien holder on the property and has an interest can come in during the redemption period which is statutorily prescribed. I can check with my real estate people to confirm that but I there is no separate; it is a judicial foreclosure state and the procedure is what is laid out in the statute though there are different statutes for foreclosure depending the municipality.

*Michael:* I know, but since we are not on the property tax bill, and let's take for example that a property owner is delinquent to PACE and we are opaque right now



## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

under the process as to whether they are delinquent on their property tax bill, well if I was a mortgage lender I would give them ninety days' notice and drag their butt to court on a judicial foreclosure but, that two year period of redemption doesn't show up anywhere in that process.

**Anna:** That's right because there is no prior lien at that point, so yes, you are right. I'm saying when there is a prior lien, you have to follow the statute. If there is outstanding property taxes, or outstanding water and sewer charges, there is a process that has to be followed and there is a redemption period and there are notices that have to be given, but if you are outside of that process because you are the senior lien and then there is no process; you are right you can foreclose like a mortgage lender can foreclose...

**Michael:** Right, but that begs the question which is in a mortgage foreclosure situation someone doesn't pay their mortgage, whatever time goes by and they just go to heck we are going down we just gotta get where we can and we file judicial foreclosure action, are they required to find out whether or not they actual owe property taxes or is it they just distribute according the distribution waterfall means they have to pay off their outstanding property taxes. That's the question because in that case they don't need to know where there are outstanding property taxes to wait for a two-year redemption or whatever it is they just get to go. So, I'm trying to find out which side do we fall in, in terms of doing it, do we have to then check with you then check with the municipality to find out whether there are outstanding property taxes and we have to wait two years for them to redeem or do we just pretend we are like a mortgage lender and just say they haven't paid us we are going in and we are foreclosing right now?

**Anna:** You can't foreclose unless you, you have to check to see if there are any outstanding property taxes which EIC can help you with because that is pretty public information and they can access that information. You can't just foreclose like a mortgage lender. But even a mortgage lender, I think, would first have to pay off outstanding prior liens before foreclosing on the property to get paid.

**Michael:** Well, yeah they pay it off in the waterfall, but do they have to check it out before, well I don't know, whatever, it's one of those process things that is unique to each individual state and I'm just trying to wrap my head exactly how it would work in New York.

**Anna:** So, the way we set it up is EIC if there was a default on the PACE payment, EIC would try to give them two notices, two thirty day notices and then if they still were not able to collect they would then talk to the capital provider and the capital provider would say "are there outstanding taxes, are there outstanding prior liens?"

## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

EIC will have to go check whether there not or are and then at that point you can decide; you go one way or the other way. Either you pay off those taxes or you wait to see what happens but that's the redemption period starts on January 1<sup>st</sup> of the year in which the annual installment is due.

**Michael:** Right, I know that.

**Anna:** Okay, so I'm not sure what the question is then, am I missing something?

**Michael:** No, you just clarified it which is that we are not mortgage lenders we are more like the locality in terms of trying to figure out what the timeline is. Unless mortgage lenders in New York do this as a matter of course before they initiate foreclosure, I don't know if they do or not, but I just need to know that, you explained it so I go it.

**Susan:** Any other questions from the audience?

**Aaron/NYC Mayor's Office:** I just wanted, Susan would this be an okay time to make an announcement to this group?

**Susan:** Yeah, please.

**Aaron:** Thank you. We are also really excited, as Susan described, about the amendment that's been introduced to allow for new construction and EIC's supportive of that and bringing that into the PACE program. I wanted to let folks know and we'll be doing some direct outreach soon the City actually went through a formal process of submitting requests for legislation in the legislature to allow for resiliency measures to be included in the PACE program as well and that's not yet public but we are working with the Assembly and Senate leadership right now to get those bills assigned to members hopefully by the end of this week or early next week. So, I do hope if there is any advocacy being done from this group, there will be advocacy being done with this group and that will also be supportive of that additional opportunity of including resiliency improvements to buildings as part of the PACE program here.

Cliff Kellogg: That's great, Aaron, when you get an idea of what the bill number is would you let us all know and is this also going to be Statewide in its application?

**Aaron:** Correct, this is a change to the State 5L so that would allow EIC, I think it would have to be each program, municipal law in New York City would have to be amended to bring that in there is interest and I think that would be a quick process



## PACE ADVISORY COMMITTEE CONFERENCE CALL JUNE 6, 2019

and I will let EIC speak for themselves but I would image that would be their intention to bring that into the program as well.

**Susan:** It would apply to EIC as well its' a state law. We don't have to amend anything it would just be included because our documents are written to reflect Article 5L also, so we would be fine.

**Aaron:** So, me directly or Fred Lee from NYCEEC will be in touch in the next couple of days with information when there is a bill number. And thank you in advance for any support for that effort as well as new construction which hopefully we can get both through before the end of this month.

**Susan:** If anyone wants the bill number for new construction, I can give it to you, I think it's A07805. Thank you. Any other questions? If there are no further questions at this time, thank you to everyone for being on the call, please send an email if you want to weigh in on any of the topics that we discussed, privately, we will be happy to talk. Thank you.